

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

ROCCO FUNARI §
v. § CIVIL ACTION NO. 5:13cv8
JASON SMITH, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANT BRIAN NICHOLS

The Plaintiff Rocco Funari, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Service of process was attempted on the Defendant Brian Nichols by the United States Marshal, but this service was returned unexecuted. The Magistrate Judge ordered Funari to provide a valid and current address for Nichols, and Funari requested an extension of time which was granted, but he failed to do so.

The Magistrate Judge issued a Report recommending that Nichols be dismissed from the lawsuit without prejudice for failure to effect service of process, as provided in Fed. R. Civ. P. 4(m). Funari responded to the Report by stating that he had no way to locate a current address for Nichols and again asking the Court to appoint counsel for him. This response does not object to any specific portion of the Magistrate Judge's Report and therefore preserves only plain error for review. Fed. R. Civ. P. 72(b)(2)(requiring specific objections); McClure v. Texas Department of Criminal Justice Corrections Department, 459 Fed.Appx. 348, 2012 WL 177369 (5th Cir., January 20, 2012) (where prisoner did not file specific objections to Magistrate Judge's Report, appellate court would review

only for plain error). Even if Funari's response was construed as objections to the Magistrate Judge's Report, such objections lack merit.

The Court has conducted a careful *de novo* review of the pleadings, the Report of the Magistrate Judge, and the Plaintiff's response thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and the Plaintiff's response raises no meritorious grounds. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 50) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's claims against the Defendant Brian Nichols are hereby DISMISSED without prejudice for failure to effect service of process. Fed. R. Civ. P. 4(m). (T is further

ORDERED that the statute of limitations on the Plaintiff's claims against Nichols is hereby SUSPENDED for a period of sixty days following the date of entry of final judgment in the case. Should Funari obtain a current and valid address for Nichols prior to the expiration of the statute of limitations, he may refile these claims in a separate action or seek to reopen the claims against Nichols in the present case.

It is SO ORDERED.

SIGNED this 15th day of August, 2014.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE